

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 25 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services) CC Docket No. 98-147
Offering Advanced Telecommunications)
Capability)

To: The Commission

COMMENTS OF TANDY CORPORATION

Tandy Corporation, the parent corporation of RadioShack, by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby respectfully submits its Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding, FCC 98-188 (rel. Aug. 7, 1998).¹

I. INTRODUCTION

Through nearly 7,000 affiliated RadioShack stores, Tandy Corporation is one of America's premier retailers of high quality consumer electronics and telephone equipment. In recent years, Tandy's RadioShack stores have become a source of telecommunications services for American consumers. For example, consumers may select from an array of cellular, PCS, long distance and Internet service options offered by RadioShack on behalf of facilities based carriers. RadioShack fully expects to

¹ Federal Register notice of the NPRM was published on August 24, 1998, 63 Fed. Reg. 45,140. On August 12, 1998, the Commission released a Public Notice establishing a comment date of September 25, 1998.

also offer broadband advanced telecommunications services in the near future to homes and businesses. However, to do so, it must be able to obtain access to broadband networks that will enable it to offer affordable advanced services to average consumers and small businesses. Tandy thus has a keen interest in the development of competitive U.S. telecommunications markets and in this proceeding.

In the NPRM, the Commission proposes to allow incumbent local exchange carriers (ILECs) to avoid the procompetitive requirements of Section 251(c) of the Telecommunications Act in the provision of so-called "advanced telecommunications services"² if they provide such services through a "separate affiliate." For the reasons stated below, Tandy respectfully urges the Commission not to exempt ILEC separate affiliate provision of advanced services from Section 251(c). If it does, however, the public interest requires strict separation rules to minimize the competitive advantages that will inure to such affiliates.

² The Commission defines advanced telecommunications services as "wireline, broadband telecommunications services, such as services that rely on digital subscriber line technology (commonly referred to as xDSL) and packet-switched technology." Introduction to NPRM at ¶ 3.

II. DISCUSSION

A. Advanced Telecommunications Services Are Subject To Section 251(c) of the Act.

Congress enacted Section 251(c) of the Communications Act, 47 U.S.C. § 251(c), to facilitate competition with monopoly local exchange carriers. Among other things, Section 251(c) requires ILECs to resell "at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4). Since its enactment in 1996, this resale obligation has become a cornerstone of local exchange market competitive entry throughout the United States.

In the NPRM, the Commission correctly concludes "that advanced services marketed by incumbent LECs generally to residential or business users or to Internet service providers should be deemed subject to the section 251(c)(4) resale obligation, without regard to their classification as telephone exchange service or exchange access." NPRM at ¶ 189. The Commission, however, states that if "specific advanced services are marketed primarily to telecommunications carriers . . . they would remain outside the scope of the resale obligation." NPRM at n.352 (emphasis added). The Commission's proposed exception to the resale obligation does not comply with the plain language of the statute. Section 251(c)(4) applies to "any telecommunications service that the carrier provides at retail to

subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4). Whether an ILEC "primarily" markets a particular advanced service to telecommunications carriers is irrelevant. The inquiry required by the statute, and the one from which the Commission cannot deviate, is whether any non-telecommunications carrier obtains the service in question at retail. If so, the service is subject to resale at a wholesale discount. The Commission's proposal to except from the resale mandate advanced services that are primarily marketed to telecommunications carriers is not permitted by the plain language of the statute. See Chevron U.S.A. Inc. v. Natural Resources Defense Counsel, 467 U.S. 837, 842-43 (1984) (only if a statute is ambiguous is an agency afforded discretion to interpret its meaning).

B. The Commission Should Not Permit ILEC Avoidance Of Section 251(c) Resale And Other Obligations.

Although the Commission acknowledges that advanced services are subject to the Section 251(c)(4) resale mandate (NPRM at ¶ 189), it invites ILECs to circumvent this and other requirements of Section 251(c) by establishing a separate affiliate for the provision of advanced services.³ The Commission's proposal is an

³ Section 251(c) also requires ILECS to provide: (1) interconnection with their networks at any technically feasible point, 47 U.S.C. § 251(c)(2); (2) nondiscriminatory access to unbundled network elements, 47 U.S.C. § 251(c)(3); and (3) physical collection of equipment for interconnection or access to unbundled network elements. 47 U.S.C. § 251(c)(6). The

(continued)

unfortunate retreat from Congress' clear intent to foster local competition.⁴

The Commission's separate affiliate logic rests on the unsound premise that the separate affiliate would "not derive unfair advantages from the incumbent LEC." NPRM at 87. Today's megaBOCs, like their smaller predecessors, undoubtedly will find means to skirt the Commission's separate affiliate rules. In fact, the Commission recognizes the perils of its proposal noting that an ILEC corporate parent may seek to transfer funds to the separate affiliate. NPRM at 113.

It is not possible, as the Commission hopes, to place ILEC advanced service separate affiliates "on the same footing as any of their competitors." NPRM at ¶ 86. While the Commission's goal of competitive parity is laudable, ILECs surely will find avenues to competitively advantage their affiliates. Indeed, the Commission acknowledges this fact when it states that less stringent separate affiliate safeguards would lead to "increased entanglement of the incumbent LEC and its advanced services

(..continued)

Commission's proposed separate affiliate rules would enable ILECs to avoid all these procompetitive requirements.

⁴ In the NPRM, the Commission emphasizes that it is not proposing de jure forbearance from Section 251(c) under Section 10 of the Communications Act. NPRM at ¶ 93. The competitive impact of the Commission's proposed separate affiliate rules, however, would amount to de facto forbearance.

affiliate." NPRM at ¶ 116 (emphasis added). Obviously, the Commission foresees some inevitable entanglement under its proposed rules for it to see increased entanglement under less stringent rules. A level competitive playing field is only possible if there is no improper entanglement; since this is unlikely, the public interest would be better served if ILEC advanced services separate affiliates are subject to the procompetitive requirements of Section 251(c) of the Act.

C. If The Commission Permits ILEC Separate Affiliate Provision Of Advanced Services, It Must Adopt Stringent Separate Affiliate Rules.

If the Commission ultimately permits ILEC circumvention of Section 251(c) through separate affiliate provision of advanced services, only strict separation rules will minimize the unfair competitive advantages separate affiliates would derive from ILECs. First, the Commission should adopt all 7 of its proposed separate affiliate structural separation and nondiscrimination requirements. NPRM at ¶ 96. While all are important to mitigate the competitive advantages of separate affiliates, none is more important to ensuring the greatest arms-length separation than the Commission's prohibition on the sharing of directors, officers, or employees. Second, the Commission should not, under any circumstances, venture down the slippery slope to lesser separation for advanced services affiliates of "smaller" ILECs. See NPRM at ¶ 98. Third, the Commission's goal of creating a

level competitive playing field (NPRM at ¶ 86) cannot be realized if it permits either "a de minimus exception for transfers of [ILEC] network elements . . . [or] an analogous exception for the transfer of any other [ILEC] assets." NPRM at ¶ 114. ILECs and their affiliates surely will exploit any such exception to their competitors' detriment. ILEC network element and asset transfers should be prohibited.

Brand Name Transfer. The Commission inquires whether the transfer of an ILEC's brand name would unfairly advantage its separate affiliate. NPRM at 113. ILEC, and especially BOC, brand identity is powerful and enduring; indeed, some consumers believe all their telecommunications services are provided by their local telephone company. The Commission must prohibit any transfer of ILEC brand name identity to separate affiliates.

Transfer of Customer Accounts. The Commission also asks if there would be competitive risks associated with ILEC transfer of customer accounts. NPRM at 113. An ILEC shift of its established customer base to its separate affiliate would provide the separate affiliate an improper competitive head start and must be prohibited.

III. CONCLUSION

For the foregoing reasons, Tandy Corporation believes that the public interest would be best served if the Commission does not permit ILECs to avoid the procompetitive mandates of Section 251(c) of the Communications Act through advanced service separate affiliates. If the Commission does adopt a separate affiliate scheme for the provision of advanced services, it must adopt and enforce strict separation rules. In addition to the separation requirements proposed in the NPRM, the Commission's separation rules should prohibit ILEC transfer of network elements, assets, brand names, and customers and forbid parent corporation funding of separate affiliates.

Respectfully submitted,

TANDY CORPORATION

By: Ronald L. Parrish
Ronald L. Parrish
Vice President of Corporate
Development
Tandy Corporation
100 Throckmorton Street
Suite 1800
Fort Worth, TX 76102

September 25, 1998

CERTIFICATE OF SERVICE

I, Carolyn L. Marshall, hereby certify that on this 25th day of September, 1998, the foregoing Comments of Tandy Corporation including a copy on diskette were served by hand to the following:

International Transcription Services, Inc.
1231 20th Street, NW
Washington, DC 20037

Ms. Janice Myles
Common Carrier Bureau
Policy and Program Planning Division
1919 M Street, NW
Room 544
Washington, DC 20554


Carolyn L. Marshall